

**Sewage Handling & Disposal Advisory Board Meeting Minutes  
August 8, 2008**

- *Members in Attendance:*

Tom Basham, Chairman  
V'Lent Lassiter  
Bill Keeling  
Don Alexander  
James Hall  
Pam Pruett, Recorder

Marcia Degen  
John Harper  
Robert Wadsworth  
Jim Pyne  
Rick Blackwell (for Joel Pinnix)

- *Visitors in Attendance:*

Allen Knapp  
Elizabeth Deitzman  
Anish Jantrania  
John Payne

Dr. Jim Burns  
Pete Keseker  
Rick Fellenz  
Colin Bishop

- The meeting was called to order at 10:00 a.m. and a quorum established.
- The agenda for the meeting was reviewed. Marcia Degen moved to adopt the agenda. Bill Keeling seconded the motion. A vote was cast and the resulted in all ayes; therefore, the agenda was adopted.
- The minutes of the July 2008 meeting were reviewed. Pam Pruett moved to adopt the minutes with no corrections. Marcia Degen seconded the motion. A vote was cast and the resulted in all ayes; therefore the minutes were adopted as written.
- The minutes of the June 2008 meeting were also reviewed. Tom Basham reminded the group that the minutes were discussed during the July meeting but no vote was cast because a quorum for the group had not been established. A vote was cast and resulted in 4 abstentions and 8 ayes. The minutes were adopted as written.
- David Dick, with the Department of Professional Occupation Regulation (DPOR) was present to provide information and a power point presentation on the movement of the AOSE program to DPOR. Mr. Dick stated the regulations have been written and are under legal and policy review at this time. Per the regulations as they are presently written, all current AOSE's in good standing with the department at that time will continue to operate as AOSE's after July 1, 2009. Each AOSE will have a 6 month period to apply to DPOR to obtain an interim On Site Evaluator's (OSE) License. The OSE license will be good for 36 months and is non renewable. During the 36 month period, the AOSE's can work to acquire the qualifications necessary to be either a Conventional System ASOE or an Alternative System AOSE. After the 36 month period, each AOSE will be required to pass an exam to acquire the licensed for which they are qualified. A fee will be associated with obtaining the license(s) and sitting for the exam. It was noted that in 2008 the General Assembly divided the

(future) AOSE's into to levels: conventional systems design and alternative systems design.

Mr. Dick stated that hopefully the agency would move to the public comment period from October to November. Mr. Dick stated that if a party wishes to comment on the regulations, it will be very important to be specific as to how the regulation would harm the party and what type of change in the regulation would result in relief.

Mr. Dick spoke to the subject of the practice of engineering by un-licensed parties. It is a Class I Misdemeanor to practice engineering without the appropriate license. Mr. Dick explained that if a PE were to violate engineering codes, a complaint or referral would be made to the Complaint & Investigations Division (CID) of DPOR and the matter investigated. If the PE were thought to be guilty, then the PE would be brought before the board and would be required to show cause as to his/her innocence and as to why that individual should be permitted to retain their license. The aim of the board is to gain compliance. Warnings could be issued to the offending party in lieu of prosecution. Disciplinary action by the board may affect the status of an engineer's license to practice. It is possible for the general public to attend a hearing and interested parties may be granted 5 minutes to speak.

Rick Blackwell well referred to the exception to the practice of engineering and questioned what would happened if an OSE were found to be practicing engineering. If an OSE is found to be practicing engineering, then he/she would be brought before the OSE board in a process much like the PE board.

Tom Basham indicated that he did not feel this is such a black and white issue—there are many shades of grey. Mr. Basham wanted to know where the fine line is. The question could not be answered and it was thought by the group that the line may not exist.

A scenario of an OSE practicing engineering without a license was presented by Tom Basham. Don Alexander advised that if a system design were submitted to VDH, the department would first determine weather the design met the regulations. If the design were found to be compliant, then the department would issue a permit and refer the matter as necessary to DPOR.

Mr. Alexander further advised that VDH has no purview over licensing of individuals. Mr. Dick agreed with this statement. Don Alexander also stated that VDH will not regulate the professionals; they will regulate public health as it pertains to wastewater.

Some individuals felt that the department had an obligation to report OSE's who practice engineering without the appropriate license.

Rick Blackwell expressed concern over the potential damages to the consumer who hires an individual to design a system and ends up with an inappropriately designed

system because the designer (OSE) is practicing engineering. He indicated that if a permit for construction is issued by the department, and then the department would be partially liable for the damages incurred.

Sovereign Immunity was then discussed.

Pam Pruett asked if a VDH referral to DPOR would be carbon copied to the (future) defendant OSE. Mr. Dick and Mr. Alexander both replied that this would be the appropriate action to take.

Mr. Dick then provided his Power Point presentation to the group.

- Establishment of a Committee Rules was discussed. Tom Basham indicated that he felt it would be appropriate to designate a subcommittee to draft minimal rules for the group. The subcommittee would be charged to present a set of proposed rules to the full board for comment and eventual adoption. Jim Pyne stated that the Sewage Advisory Board is an advisory group only. Bill Keeling added that decisions made by the group may impact manufacturers and the group should have minimal ground rules for operation. Bill Keeling, Jim Pyne, Tom Basham, and Joel Pinnix were nominated to serve on the group. Tom Basham indicated that he did not wish to chair the subcommittee; the group decided to post Joel Pinnix as the chair.

Jim Pyne moved to designate a 4 person subcommittee (Bill Keeling, Jim Pyne, Tom Basham, and Joel Pinnix) to establish minimum rules for the Sewage Disposal Advisory Committee. Bill Keeling seconded the motion. All votes were aye and the motion passed unopposed.

- Work on the New Regulations was discussed. Tom Basham reviewed the letter he had written to the board, dated July 28, 2008. (See attached *July 28 2008 Ltr*) He indicated that he was confused and befuddled about what the “compliance boundary” truly is. He asked if the compliance boundary was the end of the pipe at the treatment unit or is it a system compliance boundary? He further asked if it is 2 distinct entities or 1. Allen Knapp replied that a Treatment Device + Soil Treatment = Desired Outcome. Further, a Compliance Boundary + Performance Standard = Desired Outcome. The end of pipe would be the presumptive test for the compliance. There would be a waiver of certain monitoring for prescriptively designed systems until evidence shows pollution/violation; then the system would have to comply with monitoring requirements.

Don Alexander stated that the end of pipe is an easy way to monitor the compliance. The compliance boundary has to be around the system. The end of the pipe would be the monitoring point. The end of pipe standards to get the treatment standards + receiving environment = performance standard. Review and approval would be based on statistical methodology. To get listed as a prescriptive system, third party data sets would be submitted to VDH for review. Approvals would be granted for a 36 month duration. VDH would sample a subset of the systems installed during that 36 months.

The results of the testing determine listing—the last set of results obtained would drive the listing. Prescriptive devices would be listed. VDH will look at a variety of devices to determine actual performance.

Rick Blackwell stated that the capacity of systems; i.e. ability to treat waste strengths should be reviewed to determine treatment abilities. He added that some systems that are currently listed cannot comply at this time.

Don Alexander replied that systems would have rated capacities to consider loading, etc.

Marcia Degen stated that she didn't feel working concepts of larger systems with engineered systems and monitoring requirements. Don Alexander replied that the prescriptive listing would only be applicable to systems with less than 1,000 gpd design.

Tom Basham asked what a prescriptive system was. Don Alexander replied that the prescriptive reference is to the treatment devices.

The group discussed the soil component and “soil credits” for installation conditions such as setbacks.

The question of what to do about treatment devices whose treatment levels fall from one treatment standard (TS) level to another (i.e. TS3 to TS2). Further, it was asked who would be responsible—the manufacturer or the owner of the system? One answer was that a revocation of waivers/listings on a case by case basis would ensue.

Rick Blackwell asked, for manufactured products, who would determine the TS level? Don Alexander responded that data sets would be submitted to the technical review committee for review. The manufacturer would be responsible for requesting a specific TS level approval. There would be a minimum data set requirement. VDH would make the final approval decision for the devices.

Don Alexander & Allen Knapp stressed that the following would apply for prescriptive systems & designs:

Systems would be given a 3 year trial. After 18 months, quarterly testing by VDH on 20 systems. The results of the testing would dictate the future listing. A running dataset would be created for a current snapshot of the systems function. The testing would be ongoing and would capture a 95% confidence level.

Pam Pruett questioned how/where sand filters would be treated, especially in light of the fact that they are not proprietary. The answer was that this had not been determined.

The discussion turned back to compliance boundaries. Marcie Degen queried “What are we trying to protect?”

Bill Keeling stated that only using texture to evaluate soils in situ is incorrect; it is important to also consider soil structure.

Allen Knapp asked if the compliance boundary in the soil should be created by regulation. Rick Blackwell replied that the compliance boundary in the soil would be performance based.

Tom Basham stated he wants a fixed horizontal and vertical compliance boundary based on what it is that we seek to protect.

Allen Knapp pictures the compliance boundary as a 3 dimensional unit—the upper boundary would be the ground surface or the top of the mound, and the lower boundary would be water or a restriction in the soil. A specific depth to the lower restriction may be required. Compliance is imputed at the compliance boundary. Prescriptive designs will have horizontal dimensions attached to the compliance boundary; for example 3' from edge or surface to whatever.

Loading rates and dosing were also discussed and the group agreed this is a critical control point for the proper function of the systems.

Nitrate loading rates will be different from hydraulic loading rates.

Allen Knapp asked the board if they felt a subcommittee should be created to work on the operations and maintenance portion of the regulations. It was decided that this would be a topic for a future meeting.

Tom Basham proclaimed that the meeting had been very productive.

?????? moved to adjourn the meeting. The motion was seconded by ????.

The meeting was adjourned at 1:45 p.m.